IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 575 OF 2003

Haresh K. Samtani .. Petitioner .

vs.

Sam Bruch Daruwalla

& Ors. .. Respondents.

Mr. B. G. Vaidya for the petitioner.

Mr. Veenit Naik i/by Mrs. Javer Mamniya

for respondent no.1.

Mr. Kamal Khata i/by Nitya Sunil & Asso.

for respondent no. 2.

Ms. Mamta Sadh, AGP., for R. No. 4.

CORAM : S.U. KAMDAR, J.

DATE : 20th April, 2006.

P.C.:

. The present petition is filed challenging the membership granted in favour of respondent no. 1 by the Registrar, Co-operative Societies. Some of the material facts of the present case are as under :-

2. The building known as Motabhoy Mansion

situate Opposite Oval Maidan, near Eros Cinema on Plot No. 130, Queens Road, Bombay 400 020 was constructed some time in 1935. In 1940 Col. Jal Cooper, along with his wife Dr. (Mrs.) Shirin Jal Cooper acquired tenancy in respect of Flat No. 3 in the said Motabhoy Mansion and as tenants they were in use and occupation thereof till 25.5.1963. The said Col. Jal Cooper died leaving behind his wife Dr. (Mrs. Shirin Jal Cooper as a tenant of the said flat. On 20.6.1966 the then landlord of the building issued a circular to all the parties including Dr. (Mrs.) Shirin Jal Cooper stating therein that he is not interested in continuing the landlordship of the said building and is proposing a cooperative housing society of tenants/occupants of the said building. He asked all the tenants including Mrs. Shirin Jal Cooper to become member of the said society. It seems that large number of tenants accepted the said proposal but few tenants including Dr. Shirin Jal Cooper did not accept the said proposal to join as a member of the said society. In fact Dr. Shirin Jal Cooper by her letter dated 24.6.1967 refused to accept membership because she was not interested in making the payment of the purchase amount of Rs. 21,500/- as proposed by the landlord. It seems that thereafter some of the tenants including Mr. K.R. Samtani, Mr. K. M. Munim who was the landlord and Mr. F.E. Merchant proposed a society. On 17.4.1967 the

society was registered as a tenant co-partnership housing society under the provisions of the Maharashtra Cooperative Societies Act. It is the case of the petitioner that on 27.5.1967 one Mr. Lalwani got himself admitted as a member of the said society in relation to the said flat being flat no. 3 of the said building which was in occupation of Dr. Mrs. Shirin Jal Cooper as a tenant. On 10.6.1967 a document of indenture of assignment has been executed by and between the original landlord and the society with various members being joined as confirming parties. It is the case of the petitioner that after the said Mr. Lalwani became the member of the society, the said deceased Mrs. Shirin Jal Cooper was paying rent to the said Mr. Lalwani and she accepted him as her landlord. During 1967 to 1969 the said Mr. Lalwani filed suits in the Small Causes Court as well as before the Co-operative Court seeking possession of the said property. Sometime in or about 1970 the said Mr. Lalwani left India and appointed one Mr. Vishnu M. Uttamchandani as his constituted attorney. Sometime on or about 6.2.1973 the said Mrs. Shirin Jal Cooper applied for membership of the society but by that time the record shows that Mr. G.I. Lalwani was already a member and the share certificate was issued to him on 25.6.1967. The said application of Dr. (Mrs.) Shirin Jal Cooper was not considered by the society. Sometime

in or about 1973 the said Mr. Lalwani supposed to have gifted the said flat to one Mrs. Nina Thadani being the daughter of the Chief Promoter and by virtue of the said gift deed the said Mrs. Nina Thadani claimed the right, title and interest in the said property. On 15.6.1983 the said Dr. (Mrs.) Shirin Jal Cooper again made an application for membership of the respondent no. 2 society. The said application was rejected by the society on 25.7.1983. On 30.3.1988 Mrs. Thadani executed a gift deed in favour of the petitioner who is the son of the deceased Chief Promoter Kundanmal Samtani. In 1988 the said Dr. (Mrs.) S.J. Cooper filed an appeal before the Deputy Registrar, Co-operative Societies under Section 23 of the Maharashtra Co-operative Societies Act challenging the rejection of her application for membership. On 29.12.1998 the said Deputy Registrar decided the application in favour of Dr. (Mrs.) Shirin Jal Cooper and granted her membership. The said order further directed that the said Dr. (Mrs.) Shirin Jal Cooper has to contribute her share in the assets of the respondent society. The petitioner herein challenged the said order by preferring a revision being Revision Application No. 32 of 1989 and the society filed a revision application being Revision Application No. 7 of 1989 before the Divisional Joint Registrar. By an order dated 4.12.1990 both the revision applications were allowed and the order passed by

the Deputy Registrar was set aside. Against the said order, the said Dr. (Mrs.) Shirin Jal Cooper preferred a second revision application before the State Government which also came to be dismissed by an order dated 8.7.1992. On 16.8.1992 the petitioner was admitted as a member in respect of the said flat no. 3 by the 2nd respondent society and the share certificate was transferred in favour of the respondent no. 3. On 14.10.1993 Dr. (Mrs.) Shirin Jal Cooper filed a writ petition in this Court being Writ Petition No. 5342 of 1993 challenging the order of the Minister passed on revision under Section 154 of the Maharashtra Co-operative Societies Act. The said writ petition came to be admitted by this Court but no interim relief was granted. On 11.7.1994 the said Dr. (Mrs.) Shirin Jal Cooper expired. Sometime in or about 2001 the respondent no. 1 claiming to be the legal heir of the deceased Dr. Shirin Jal Cooper filed an application for becoming the member of the said society. However, his application was not decided. Therefore he applied to the Registrar for an order under the provisions of Section 23 (1A) for a direction that he has become a deemed member of the said society. In the said proceedings, by an order dated 10.8.2001, the respondent no. 3 has granted the membership to the respondent no. 1 and it is being directed that the said respondent no. 1 should be shown as a member in respect of the said

flat no. 3. Against the said order, the petitioner preferred a revision application being Revision Application No. 479 of 2001 before respondent no. 4. Thereafter by an order dated 18.10.2002 the said revision application No. 149 of 2001 came to be dismissed and thereafter the present writ petition is filed challenging the said order.

3. Writ Petition No. 5342 of 1993 came up for hearing before me along with the present Writ Petition being Writ Petition 575 of 2003 on 17.4.2006. In view of the fact that Dr. (Mrs.) Shirin Jal Cooper has expired on 11.7.1994 I had disposed of the petition as infructuous by holding that the membership being personal right of Dr. (Mrs.) Shirin Jal Cooper on her death the said application cannot be granted nor the validity of the order can be considered. However, I had made it expressly clear that in so far as respondent no. 1 is concerned, if he is held to be a legal heir then it is open for him to press for his application which has been granted and which has been challenged by the petitioner in the present writ petition can be independently considered. Accordingly, the present writ petition is heard by me.

4. I have heard the parties at length.

5. The learned counsel for the petitioner has

submitted the impugned order is illegal and bad in law because the petitioner was already a member of the said society and therefore, the application by the respondent no. 1 to become a deemed member was not maintainable nor the same could have been granted by the Deputy Registrar. He has further submitted that the application which was preferred by Dr. (Mrs.) Shirin Jal Cooper has already been rejected and the writ petition has become infructuous and, therefore, the respondent no. 1 who is claiming to be her legal heir and the said rights of the legal heir are not accepted by the petitioner herein, he is not entitled to become a member of the said respondent no. 2 society in the present proceeding.

6. The learned counsel for the petitioner has thereafter contended that Dr. (Mrs.) Shirin Jal Cooper failed to make payment of purchase price and refused to accept the offer to become member of the said society and, therefore, she had abandoned her right to become member of the said society and after lapse of many years it is not permissible for her to claim membership because in the intervening period the right, title and interest in respect of the said flat has been granted in favour of Mr. Lalwani and the said right, title and interest has been further transferred in favour of the petitioner herein through Mrs. Thadani. It has been submitted that

thus the petitioner is the owner of the said flat and the petitioner is a rightful member thereof and in that light of the matter the respondent no. 1 or for that matter Dr. (Mrs.) Shirin Jal Cooper could not claim membership of the said flat. At the highest her status is only of the tenant in respect of the said flat and not as a member thereof. It has been therefore submitted that the impugned order granting the membership rights in favour of the respondent no. 1 is liable to be quashed and set aside and application granted in favour of the respondent no. 1 is liable to be rejected.

7. The learned counsel for the respondent no. 1 has on the other hand contended that the petitioner has no locus to maintain the present petition. The petitioner has failed to establish any right whatsoever in respect of the said property. He has submitted that there is no document on record to indicate that Lalwani has purchased any right from any person in respect of the said property. It has been submitted that if Lalwani has no right, title and interest in the property, no right, title and interest could be granted in favour of the petitioner because he is claiming through Lalwani. It has been further submitted that in any event the society is a tenant co-partnership. Pursuant to Bye Law 6 (2) of the Bye Laws of the Society no membership can be

allotted more than the tenements available and, therefore, in respect of flat no. 3 the deceased Dr. (Mrs.) Shirin Jal Cooper was a tenant and thus except her no other person could have been granted the membership in respect of the said flat. It has been further submitted that the so-called membership of the petitioner has ben in fact terminated by passing of resolution dated 2.9.2001 and in the said meeting of the society, the petitioner himself was present. The society by the resolution has held that the shares of the respondent no. 1 should be forfeited and he should be ceased to be a member of the society in view of the fact that in spite of repeated demands, the petitioner is not producing any document indicating any right, title or interest either in favour of Lalwani or through Lalwani in his favour. It is therefore further submitted that the record of the society indicate that there are no documents whatsoever on record and it seems that a fraud has been perpetrated by said Lalwani in collusion with one of the Chief Promoter Mr. Kundanmal Samtani and the petitioner herein is the son of the said deceased Chief Promoter. It has been thus submitted that the petitioner’s membership having been terminated by a resolution passed by the society which has not been challenged by the petitioner himself even though five years have lapsed, the said resolution is legally binding on him. In that light of the matter, the contention of

the respondent no. 1 that the petitioner has a valid membership during the subsistence of the membership of the petitioner, the respondent no. 1 could not have been made member has no merit and the same is required to be rejected.

8. The learned counsel for the respondent no. 2 society has contended that the record of the society indicates that there are no documents of any nature whatsoever to indicate that Lalwani had acquired any right, title or interest in the flat so as to enable the society to confer membership on the said Mr. Lalwani and consequently the transfer of membership in favour of the petitioner herein. The learned counsel for the 2nd respondent has drawn my attention to the correspondence which has been sent by the 2nd respondent to the petitioner demanding the documents in respect of the right, title and interest, if any, claimed by the petitioner in respect of the said flat.

9. I have heard the parties and I am of the opinion that in the present case the contention of the learned counsel for the petitioner that during subsistence of his membership the application could not have been granted to the respondent no. 1 cannot be accepted. At the first instance even before me the learned counsel for the petitioner has failed to produce any documents to establish any

right, title and interest having been acquired by said Lalwani and/or through Lalwani by him. He has produced before me that the deed of assignment dated 10.6.1967 which has been executed by the landlord in favour of the society to which various members are confirming parties and in that the name of Lalwani is also mentioned. He has also produced before me two letters one dated 10.8.1967 which has been sent by the then landlord to Dr. (Mrs.) Shirin Jal Cooper stating that her tenancy has been attorned to Gobind I. Lalwani and the letter by which the Dr. Mrs. Shirin J. Cooper has made payment of the rent to said Mr. Lalwani. In my opinion, this does not establish any acquisition of the property right in respect of the said flat no. 3 by the said Lalwani so as to claim any membership in respect of the said flat no. 3. I am conscious of the fact that this issue cannot be determined in a proceeding under section 23 of the Maharashtra Co-operative Societies Act and the parties are required to file a substantive proceeding either under section 91 of the Maharashtra Co-opeative Societies Act or file a regular civil suit so as to establish their right, title and interest in the property. I am however, also of the opinion that unless the petitioner establishes his right, title and interest in respect of the said flat he cannot claim any right of membership in the said flat merely by virtue of the fact that his name is indicated on the share

certificate. The original share certificate has been issued to Mr. Lalwani on 25.6.1967. I am of the opinion that unless a person has an interest in the property in respect of their respective premises, no stranger can be made a member of the society and in that view of the matter, I am of the view that both the parties i.e. the petitioner and the respondent no. 1 are required to be relegated to the remedy of filing of an appropriate civil proceedings either under the provisions of Section 91 of the Maharashtra Co-operative Societies Act or a civil suit as may be permissible in law. I am also of the further opinion that the impugned order granting membership to the respondent no. 1 herein is required to be suspended for a period of time so as to enable the parties to obtain appropriate relief in substantive proceedings which is required to be filed between the parties. I am also of the view that the claim of the petitioner that he is a member cannot be sustained by virtue of the resolution passed on 24.9.2001 and which has not been challenged by the petitioner in appropriate legal proceedings. In that view of the matter, even today the petitioner cannot be treated as a member since the resolution of the society is to terminate the membership of the petitioner herein. The petitioner is also required to file an appropriate proceedings to challenge the said resolution. The petitioner has not done so. In that light of the

aforesaid, I am of the view that the impugned order which is challenged before me is suspended for a period of three months from today and relegate both the parties herein to the remedy of filing either a dispute under Section 91 of the Maharashtra Co-operative Societies Act or a civil suit as they may be advised. The membership rights will be governed by the appropriate orders passed by the Court in civil proceedings or in a proceedings under Section 91 of the Maharashtra Co-operative Societies Act and the same will be subject to the ultimate out-come of the said proceedings. Petition, therefore, disposed of accordingly. No order as to costs.